



S. 214 – Preserving United States Attorney Independence Act of 2007

Floor Situation

S. 214 is being considered on the floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Senator Dianne Feinstein (D-CA) on January 9, 2007, and was passed in the Senate, as amended, by a vote of 94 – 2 on March 20, 2007.

S. 214 is expected to be considered on the floor of the House on May 22, 2007.

**Note: Similar legislation, H.R. 580, was introduced in the House by Representative Howard Berman (D-CA) on January 19, 2007, and was passed in the House by a vote of 329 - 78 on March 26, 2007. The details of that vote are listed in the table below,*

	<u>YEAS</u>	<u>NAYS</u>	PRES	<u>NV</u>
DEMOCRATIC	216			16
REPUBLICAN	113	78		10
INDEPENDENT				
TOTALS	329	78		26

Summary

S. 214 reestablishes* (1) a 120-day limit to the term of United States attorneys that were appointed on an interim basis by the Attorney General; and (2) a requirement that if the 120-day limit expires before the position is filled, then the district court for such district may appoint a U.S. attorney to serve until the vacancy is filled.

**Note: These provisions were revoked by the USA PATRIOT Improvement and Reauthorization Act of 2005 (PL 109-177), which gave open-ended interim appointment authority to the Attorney General.*

S. 214 establishes that U.S. attorneys currently serving on an interim basis will be subject to the 120-day limit beginning on the date of enactment of this bill.

**Note: H.R. 580 contained one provision that is not included in S. 214 that states that the above process is the “exclusive means for appointing a person to temporarily perform the functions of a U.S. Attorney” for a district with a U.S. Attorney vacancy.*

Background

There is one U.S. attorney appointed for every United States district court, 93 in total. Each U.S. attorney is the chief federal law enforcement officer of the United States within his or her particular jurisdiction.

U.S. attorneys conduct most of the trial work in which the United States is a party. U.S. attorneys have three statutory responsibilities under Title 28, Section 547 of the United States Code:

- the prosecution of criminal cases brought by the Federal government;
- the prosecution and defense of civil cases in which the United States is a party; and
- the collection of debts owed to the Federal government which are administratively uncollectible.

([Department of Justice: U.S. Attorney’s Mission Statement](#))

The provision permitting the Attorney General to fill U.S. Attorneys positions on an indefinite interim basis, pending confirmation of new nominees by the Senate, was added to the PATRIOT Act during conference negotiations between the House and Senate.

Under prior law, the Attorney General was authorized to appoint an interim United States Attorney for 120 days. If a permanent replacement was not nominated by the President and confirmed by the Senate at the end of 120 days, the chief judge of the federal district in which the vacancy occurred would appoint an interim prosecutor to serve until a permanent replacement was confirmed.

The USA PATRIOT Improvement and Reauthorization Act of 2005 amended this provision to give the Attorney General the sole authority to appoint interim U.S. Attorneys to serve indefinitely when vacancies occurred.

Additional Views

Some Republicans opposed H.R. 580, stating that “the judiciary should not exercise executive powers,” and that the rush to legislate in the wake of the U.S. Attorneys controversy had led to a poorly thought out bill. In addition, some Committee Republicans stated that the President's constitutionally assigned duties include complete control over executive branch appointments. In *Buckley v. Valeo*, the Supreme Court determined that the appointments clause permitted only the President, with the advice and consent of the Senate, to appoint officers to exercise executive authority. Some Committee Republicans felt that H.R. 580 ran contrary to this ruling.

Cost

The Congressional Budget Office (CBO) estimates that S. 214 will have no significant impact on the Federal Budget.

Staff Contact

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